

(2004) 11 JH CK 0007

Jharkhand High Court

Case No: Criminal Appeal (DB) No. 292 of 2000 (R)

Surendra Murmu

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision: Nov. 25, 2004

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 154, 162
- Penal Code, 1860 (IPC) - Section 302, 324

Citation: (2005) 1 BLJR 95 : (2005) 1 JCR 233

Hon'ble Judges: S.J. Mukhopadhaya, Acting C.J.; Narendra Nath Tiwari, J

Bench: Division Bench

Advocate: Mahesh Tiwari, for the Appellant; I.N. Gupta, APP, for the Respondent

Final Decision: Allowed

Judgement

N.N. Tiwari, J.

The appellant was put on trial for the murder of the informant's father Mangal Soren and was found guilty for the offence under Sections 302 & 324, IPC. He has been convicted and sentenced to undergo imprisonment for life u/s 302, IPC and RI for two years u/s 324, IPC.

2. Briefly stated, prosecution case is that at about 3-4.5.1998 at village Kokrad, P.S.-Tundi, District-Dhanbad the informant's marriage was being solemnized in the night. The accused-appellant Surendra Murmu, under influence of intoxication, came and started dancing and uttering filthy languages. The persons who were present over there objected to the same and drove him out from the place. The appellant threatened the informant's father and others who were present there with dire consequences. It is alleged that at about 1 O'Clock in the night when the informant's father Mangal Soren was going out for washing his feet and as soon as he stepped out of the door, he suddenly cried that the appellant stabbed him. The informant, his brother Kinu Soren (PW 6), co-villager Sunil Tudu (PW 2), Hareram

Besra (PW 4) and other persons (men and women) who were present there rushed and chased the appellant and caught hold of him with a gupti in his hand. Subsequently the informant's father succumbed to the injuries on the way to hospital. On the basis of the fardbeyan of the informant, the case was registered by the police. On investigation, the police submitted charge-sheet and the petitioner was put on trial and the same was culminated into the conviction as aforesaid.

3. The defence was the total denial of the charge. The appellant denied his guilt and claimed his false implication due to enmity.

4. The prosecution, during course of trial, examined as many as 13 witness. One defence witness was also examined. However, the 10 was not examined by the prosecution.

5. PW 1 Pan Muni Devi the widow of the deceased Mangal Soren in her evidence has stated that her husband had driven out Surendra Murmu from the house where marriage of her son was being solemnized. Regarding the assault she has stated that when the appellant assaulted her husband, she was inside the house and when she came out, she found her husband lying on the ground. PW 2 Sunil Tudu contradicting the PW 1 has stated that the appellant was driven out by some young person who was present there at that time. He has also stated that the appellant had assaulted his father with Gupti where after he had fallen down. It is relevant to mention here that the PW 2 was not examined by the Police u/s 161 Cr PC which he has admitted in paragraph 2 of his deposition. PW 3 has almost repeated the version of the PW 2. However, he has stated that he was inside the angan near the mandap at that time whereas Mangal was assaulted outside the house and there was a 5" wall in between. PW 4 Hareram Besra is a formal witness who has proved signature on the seizure list (Ext. 1) PW 5, is a seizure witness who has proved his signature on the seizure list. Though he has stated that Mangal was assaulted by the appellant, yet he was not also examined by the Police in course of investigation. PW 6 Kinu Soren stated that he along with others had driven out Surendra Murmu from the house. On the point of assault this witness has stated that later on the appellant came back and assaulted -his father with gupti and caused injury on stomach and chest where after his father had fallen down and blood was profusely oozing out. This witness also was not examined by the Police in course of investigation and he is also not a charge- sheet witness. PW 7 Sundari Majhain daughter of the deceased has stated that her father was stabbed by the appellant outside the house. She has further stated in paragraph 4 of her deposition that the police had not taken her statement regarding the alleged occurrence. Another daughter, PW 8, Suraj Mani has stated that the persons who were present had forced the appellant out and that her brother was not in the "angan" and was inside the house. She has further stated that when her father sustained injury, she came out and saw severe injuries on him. PW 9 is formal witness. He has proved the inquest report (Ext. 2) PW 10 is another formal witness on the inquest report. He is also not a charge-sheet witness. PW 11 is

the doctor who examined the informant's father and found injury of sharp cutting weapon. In paragraph 2, he has stated that the injury was simple in nature. PW 12 is the doctor who has conducted autopsy on the dead body of Mangal Soren. He found stab wound 1/4" x 1/6" cavity deep in lower part of left side on the front of chest. He found only one stab injury and opined that the same must have been caused by sharp cutting weapon. He, however, stated in para 2 of his deposition that he had found penetrating wound on dissection of the dead body. The same is contradictory to the prosecution version. PW 13 is the informant who has stated that in the night of the occurrence he went to the Police Station and narrated the incident to the Officer-in-charge of the Police Station who recorded the fardbeyan and read out to him and then he had put his signature thereon. He has further stated that "ddrogajt had come to his house on the following day and against took down his statement on which he put his signature.

6. The defence also examined a witness, Munshi Murmu. He stated in his deposition that he had seen the appellant on the said wedding night. He had seen only Saheb Singh Marandi. According to the witness, there was a lamp burning in the house and there was darkness outside. Nobody could identify the persons who had assaulted the informant's father.

7. Mr. Mahesh Tewari, learned counsel appearing on behalf of the appellant, has submitted that although there is no eyewitness and the statements of the PWs are full of contradictions, the Court below has wrongly convicted and sentenced the appellant on the basis of conjectures and surmises. According to the learned counsel, PWs-2, 4, 5, 6 and 10 were not examined by the police during the course of investigation and they are not the charge-sheet witnesses and they were suddenly produced by the prosecution for the first time in the Court. Their evidences have been erroneously relied upon whereas it is well established that the testimony of such witnesses has to be excluded as the same is of no consequence. Reliance has been placed on a decision of Division Bench of the then Patna High Court, Ranchi Bench in Megaram Rajak v. The State Bihar, reported in 1985 BLJ 44. Learned counsel further submitted that according to the prosecution case Mangal Soren had gone out to wash his feet and it was at about 1 a.m. in the night where he was attacked and assaulted at the threshold of the door from outside. There was thus no occasion for the persons who were inside the "angan" to see the incident and as such testimony of the so-called eye-witnesses is high doubtful and unreliable. The witnesses who were named in the FIR have not been examined and those witnesses were not even mentioned in the charge-sheet. The prosecution witnesses have given contradictory versions on the mode of assault. It was submitted that the persons who allegedly seized the gupti by which Mangal Soren was assaulted have given different accounts. Even on the seizure, there are contradictory statements. Learned counsel submitted that any seizure made by the public is not admissible in evidence. Learned counsel urged that the fardbeyan which was given before the police in the night of the occurrence as stated by the informant has not been

brought to light and the FIR has been drawn on the basis of the statement recorded on the next day at 7.45 a.m at the residence of the informant. According to the learned counsel the so-called/ardbeyan of the second day is hit by Section 162 Cr PC and the report prepared on the basis thereof cannot be said to be an FIR u/s 154 Cr PC and the conviction based on the said FIR is vitiated in law. Learned counsel further submitted that non-examination of the IO in this case has greatly prejudiced the appellant as he could not get an opportunity to cross-examine and take contradictions regarding the assault, the place of occurrence and the source of light for visibility of the occurrence. It has been further submitted that the entire prosecution case and even in the depositions of the PWs motive of the murder of the deceased by the appellant has not been brought to the light. Learned counsel submitted that the blood stained earth was found at the PO but the same has not been sent to the chemical examiner and the report along with the earth have not been produced in the instant case. Learned counsel submitted that it is an admitted case of single blow and at best the case was within the Ambit of Section 304 Part-II IPC and the same at any rate is not a case of murder even if the prosecution case is accepted.

8. Mr. I.N. Gupta, learned APP, on the other hand, submitted that the inmates of the house are the eye-witnesses who have supported the prosecution case and their testimony can not be rejected. According to the learned counsel though there are contradictions here and there but the evidences available on record, read as a whole, go to fully prove the prosecution case. According to the learned counsel though the IO has not been examined in the instant case but there are other sufficient evidences to establish the prosecution case and the appellant has not been prejudiced due to non-examination of the IO. Learned counsel submitted that the judgment of the Court below is sound and warrants no interference by this Court.

9. It is pertinent to notice that the informant PW 13 has stated in his deposition that he had informed the police in the very night of the alleged occurrence and that his statement was recorded by the police which was read over to him and the witness had put his signature thereon. The next day again the police officer came to his residence and again his statement was taken which was signed by him. The relevant statements occurring in paragraph 6 of the deposition of PW 13 read as follows :

"Main Thana Me Rat me Hi Khabar Dene Gaya, Daroga Mujhse Ghar Me Aake Bayan Liya Tha. Thana Me Bhi Mere Bayan Police Li Thi. Daroga Mera Bayan Mujhse Padhkar Suna Diya Tha to Mai Sahi kiya. Dusra Din. Phir Daroga Mere Ghar Aaye. Phir Mai Bayan Diya, Daskhat Kiya."

10. Undisputedly, the foundation of prosecution case, however, is the statement which was recorded on the next day at the informant's house and the said statement has been used for the purpose of trial which is not permissible in view of the provisions contained in Section 162 of the Cr PC. At any rate the said statement

can not be taken as an FIR u/s 154 of the Cr PC.

11. In our considered view, the evidence of PW 13 creates doubt on the veracity of the prosecution story, brought on the record. Further, in this case the origin and genesis of the occurrence has also not been clearly explained. The motive is conspicuously absent. The statement of PW 13 regarding the fardbeyan and non-examination of the IO have caused vital infirmity. We find substance in the submissions of the learned counsel for the appellant that serious prejudice has been caused to the defence due to non-examination of the IO. In the absence of the evidence of IO, the mist regarding the foundation of the prosecution case could not be cleared as to what was the statement which was made before the police in the very night of the occurrence at the Police Station which was also signed by the informant. The entire case is now being based on the subsequent statement which is hit by the provisions of Section 162 Cr PC which shakes the very foundation and the basis of the case and the only alternative is to take refuse of the law and draw adverse inference against the prosecution for withholding the IO's evidence of vital importance. Even otherwise, also, the occurrence could not be proved beyond doubts. The witnesses whose evidences were not taken in course of investigation, were suddenly produced in the Court and their testimony have been relied upon in convicting the appellant. The totalities of the established facts and circumstances goes to show that the occurrence took place most unexpectedly. There are also elements of premeditation. The case is of causing a solitary injury without any foundational intention to cause the death of the deceased. We also find substance in the submissions of the learned counsel for the appellant that the alleged occurrence took place in the dead night whereas the so-called eye-witnesses were all inside the house in the ".angan" where the marriage was being solemnized and as such the witnesses can not be said to be the eye-witnesses having seen the occurrence outside the house. The prosecution case is thus shrouded by multiple doubts and the appellant is entitled to the benefit of the said doubts.

12. In the circumstances, we allow this appeal and set aside the appellant's conviction and sentence. Since the appellant is in custody, he shall be set at liberty forthwith if not wanted in any other case.

S.J. Mukhopadhaya, A.C.J.

13. I agree.